

Notice of Allowability

Application No.

09/800,608

Examiner

Thomas Duong

Applicant(s)

MCKINNON ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to April 11, 2007.
2. ☒ The allowed claim(s) is/are 1-38 and 48-58.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


JASON CARDONE
SUPERVISORY PATENT EXAMINER

DETAILED ACTION

Response to Arguments

1. The Applicants' arguments and amendments filed on April 11, 2007 have been fully considered and are persuasive.

Allowable Subject Matter

2. *Claims 1-38 and 48-58* are allowed. The claims indicated include limitations that the prior arts of record do not appear to teach or render obvious, hence they are allowed.
3. The following is an examiner's statement of reasons for allowance:

As presented in the previous Office Action, Bowman-Amuah (US006542593B1) discloses, "[determining] a current level of service and compare the current level of services with the minimum level of service that the service provider can provide without violating SLAs" (Bowman-Amuah, col.52, lines 51-54). In addition, Bowman-Amuah discloses, "the Network Performance goals are tracked, and that notification is provided when they are not met (threshold exceeded, performance degradation)... This includes information on capacity, utilization, traffic and usage collection. In some cases, changes in traffic conditions may trigger changes to the network for the purpose of traffic control. Reduced levels of network capacity can result in requests t Network Planning for more resources" (Bowman-Amuah, col.21, lines 34-43). Hence, Bowman-Amuah teaches of performance tracking including capacity, utilization, traffic and usage collection, and, in some cases, changing the network for the purpose of traffic control base on these

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information. Bowman-Amuah discloses, *"for SLA violations, the process supports notifying Problem Handling and QoS violations, notifying Service Quality Management 136. The aim is to provide effective monitoring. Monitoring and reporting must provide SP management and customers meaningful and timely performance information across the parameters of the services provided. The aim is also to manage service levels that meet specific SLA commitments and standard service commitments"* (Bowman-Amuah, col.22, lines 24-32). Hence, Bowman-Amuah teaches of notifying management of SLA violations, which can be over/under usage/utilization of the current thresholds; so that management can *"[take] appropriate action to keep service levels within agreed targets for each service class and to either keep ahead of demand or alert the sales process to slow sales"* (Bowman-Amuah, col.22, lines 54-57).

Also presented in the previous Office Action, Takagi (US005881231A) discloses, *"first, the utilization status prediction unit 12 is provided in order to predict 'which information will be required by the user at which timing' and 'what kind of a network environment will be available'. This utilization status prediction unit 12 predicts the utilization status/environment of the terminal in future which changes according to the user activity, on a basis of the utilization prediction knowledge 17"* (Takagi, col.8, lines 49-56). Hence, Takagi teaches of predicting (i.e., Applicants' forecasting) the network utilization status/environment for a time period in the future based on the user's activity.

Also presented in the previous Office Action, O'Flaherty et al. (US006253203B1) discloses, *"any customer who has opted out from receiving marketing solicitations ... be omitted from any contact list created by the marketing application"* (O'Flaherty, col.9, lines 20-23). In addition, according to O'Flaherty, *"direct marketing' could be broken out into separate opt-outs for contact by telephone, direct mail, and electronic mail, and a*

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catchall for 'other' action" (O'Flaherty, col.9, lines 39-41). Hence, O'Flaherty teaches of not sending solicitations to users who have opted out from receiving solicitations by performing a check against the relevant databases. In addition, O'Flaherty discloses, *"opt-out view 266 permits the use of information for purposes of making automated decisions with action applications 110D, such as those which implement phone or mail solicitations. Views into this information are controlled by the flag in column 228. Alternatively, the value stored in column 228 may comprise a character to not only define that solicitation is permitted, but to indicate what kind and scope of permitted solicitation"* (O'Flaherty, col.9, lines 44-52). Hence, O'Flaherty teaches of checking against an "opt-out" list to determine whether permission to contact a particular individual is given or not; and, if permission is given, what kind and scope of permission is given/specified by the individual.

Also presented in the previous Office Action, Tunnicliffe et al. (US006272110B1) discloses, *"the service provider has an advantage in that he knows in advance that the agreed levels may be exceeded and he can analyse the network in advance to see if extra bandwidth can be allocated"* (Tunnicliffe, col.2, lines 15-18) and, if so, *"the service provider could then make an offer to sell extra bandwidth to the customer"* (Tunnicliffe, col.2, lines 18-19). Furthermore, according to Tunnicliffe, *"equally, if the agreed bandwidth levels will be under-utilised by the customer then both parties can make use of this information in a similar way"* (Tunnicliffe, col.2, lines 19-22). Tunnicliffe discloses utilizing *"a threshold value which may be for example, the maximum amount of bandwidth that a customer is allows to use on his virtual private network, as specified in the service level agreement between the customer and the network provider or operator"* (Tunnicliffe, col.3, lines 31-35). Hence, Tunnicliffe anticipates of the network provider

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negotiating with the end user to modify the SLA due to the network utilization exceeding the predetermined threshold amount.

However, the prior arts of record fail to teach or suggest individually or in combination as stated in the independent claims for "determining whether each user has been assigned a forecast function; determining forecasted network access usage by each user during a future time interval; comparing said forecasted network access usage by each user with a predetermined threshold value; in response to comparing, determining at least one candidate for modification of an SLA; filtering at least one candidate against a list of candidates for which a solicitation is not to be made; and soliciting at least one filtered candidate to modify an SLA related to that candidate" and in combination with other limitations as set forth in the independent claims, as well as Applicants' arguments presented on pages 13-22 of the Amendment After Non-Final filed on April 11, 2007. In the fore mentioned amendment, the Applicants argued, *"Applicants respectfully submit that claim 1, as amended, is allowable over the cited art for at least the reason that Bowman-Amuah, Takagi, O'Flaherty, and Tunnicliffe, individually or in combination, fail to disclose, teach, or suggest a "method of providing network access across a shared communications medium between competing users pursuant to service level agreements (SLAs) of the users, comprising the steps of... determining whether each user has been assigned a forecast function [and] comparing said forecasted network access usage by each user with a predetermined threshold value" as recited in claim 1, as amended. More specifically, Bowman-Amuah appears to disclose a "Proactive Threshold Manager [that] uses the information provided by the Information Services Manager to determine a current level of service and compare the current level of services with the minimum level of service" (column 52, line 49). Applicants respectfully*

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submit that this is different than a "method of providing network access across a shared communications medium between competing users pursuant to service level agreements (SLAs) of the users, comprising the steps of... determining whether each user has been assigned a forecast function [and] comparing said forecasted network access usage by each user with a predetermined threshold value" as recited in claim 1, as amended. For at least this reason, claim 1, as amended, is allowable over the cited art" (pg.14-15).

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas Duong whose telephone number is 571/272-3911. The examiner can normally be reached on M-F 7:30AM - 4:00PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason D. Cardone can be reached on 571/272-3933. The fax phone numbers for the organization where this application or proceeding is assigned are 571/273-8300 for regular communications and 571/273-8300 for After Final communications.

Thomas Duong (AU2145)

June 18, 2007



Jason D. Cardone

Supervisory PE (AU2145)